



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355
FAX (515) 281-5995/4424 * E-MAIL jroyce@legis.state.ia.us

THE RULES DIGEST

November, 2003

Scheduled for committee review
MONDAY, November 10th, 2003
Statehouse Room #116

Reference
XXVI IAB No. 08(10/15/03)
XXVI IAB No. 09(10/29/03)

HIGHLIGHTS IN THIS ISSUE:

<i>BIDDING & PURCHASING, Administrative Services Department.....</i>	<i>1</i>
<i>VOLUNTEER OMBUDSMAN, Elder Affairs Department</i>	<i>2</i>
<i>WATER POLLUTION CONTROL, Environmental Protection Commission</i>	<i>2</i>
<i>CONFIDENTIAL MEDICAL RECORDS</i>	<i>4</i>
<i>REGISTERED AMUSEMENT DEVICES, Inspections and Appeals</i>	<i>5</i>
<i>LOCAL GOVERNMENT INNOVATION FUND, Department of Management</i>	<i>6</i>

ADMINISTRATIVE SERVICES DEPARTMENT

11:00

Purchasing, IAB Vol. XXVI, No. 09, ARC 2708B,
ADOPTED.

These provisions were initially reviewed by the committee in September. The Department of Administrative Services has consolidated the three chapters of rules that governed purchasing under the former Department of General Services into one chapter. The rules apply to the purchase of goods and services of general use by executive branch agencies other than those exempted by law. Fiscal analysis of the initial filing indicated no fiscal impact.

Generally, these revisions do not make substantive changes to state policy for procurement and contracting. There have been some changes from the initial notice. The new rules do revise some existing policies and adds new ones. The rules set out additional methods of competitive selection, including a best and final offer process, a

reverse auction process and a vendor prequalification process. New rules are added relating to the procurement of architectural and engineering services. The threshold for direct agency purchasing will increase from \$2,500 to \$5,000.

Informal competition is used for purchases under \$50,000 (note: initially under notice the threshold was only \$5,000.) For construction contracts the threshold remains at \$25,000.

Architectural and engineering services rules are newly added to these requirements. In creating a solicitation, the department may request information regarding an architect's or engineer's qualifications, based on a series of factors set out in the rule. Pricing is only one of these factors. This has been a difficult issue in the past. In choosing professional services the cost of the service must be balanced with the quality and skill of the professional. This provision gives greater emphasis on determining the qualifications of the

THE RULES DIGEST

-2-

professionals over the ultimate cost of those services.

Provisions are added concerning purchases from Iowa Prison Industries, referencing Iowa Code §904.808. That provision gives prison industries a limited preference for state government purchases, with specific exceptions set out in the statute.

ELDER AFFAIRS DEPARTMENT

9:00

Volunteer ombudsman, IAB Vol. XXVI, No. 09, ARC 2904B, NOTICE.

This new program provides for the certification of volunteer long-term care ombudsmen. This unpaid volunteer program is created in 42 USC Ch. 35. Any person may volunteer, with preference given to applicants who already are resident committee advocates. The proposal sets out a lengthy list of conflict of interest restrictions; basically applicants cannot be employed or have an immediate family member employed by a care facility or have a financial interest in a facility. Applicants are also subject to a criminal background and abuse check. Before final -1c----- certification applicants must complete 24 hours of training; this training includes the history of the program, residents rights, state and federal law, including an overview of the regulatory process. Initial certification is for one year, with ten hours of continuing education. Renewals are for two years and six hours of continuing education are required.

These certificates are treated as a license and can be revoked for cause, such as: breach of confidentiality, falsification of the application, failure to obtain continuing education, etc. No contested case hearing is provided for a revocation.

A volunteer serves as an assistant to the long-term care ombudsman and may enter into any care facility unannounced. The volunteer *may* have access to medical and personal records if the volunteer has the permission of the resident or the residents representative; or if access to the records is necessary to investigate a complaint and the volunteer obtains approval of the ombudsman; or if

the information is sought by court order. However, only the ombudsman will have access to adult abuse case information.

Following notification of the facility staff the volunteer may speak privately with any resident willing to do so. Generally, the duties of a volunteer include:

- ⌘ conducting initial inquiries regarding complaints;
- ⌘ providing follow-up visits on cases investigated by the ombudsman;
- ⌘ attending, assisting with, or providing technical assistance to resident and family council meetings;
- ⌘ making follow-up visits to a facility;
- ⌘ tracking, monitoring and following up on facility performance;
- ⌘ identifying concerns in a facility and discussing those concerns with the chair of the resident advocate committee;
- ⌘ completing all reports in a timely manner.

ENVIRONMENTAL QUALITY DIVISION

9:40

General revision: Ch. 90-93, IAB Vol. XXVI, No. 08 ARC 2865B, ADOPTED.

The EPC adopts a complete rewrite of chapters 567 IAC 90-93. These newly revised provisions relate to water pollution control. Chapter 91 relates to the funding of water pollution control projects; specifically it sets out the criteria for rating and ranking projects for the water pollution control state revolving fund. The fund finances pollution control projects for both point and non-point pollution.

Relating to point source projects: a series of weighted criteria are set out in a variety of categories, these include: public use classification of the receiving waters, water quality of the receiving waters, compliance status of the point source, project benefits, readiness to proceed and a tie breaker. Each categories contains multiple subcategories.

There are three types of non-point projects, each with it's own set of criteria: livestock water quality facilities; local water protection projects and general non-point source projects. For livestock

THE RULES DIGEST

-3-

projects, the weighted criteria for non-point projects are: the use classification of the receiving waters, water quality of the receiving waters, open feedlot plan rating and a tie breaker.

For local water protection projects the weighted criteria are based on: the use classification of the receiving waters, the water quality of the receiving waters, the watershed management planning status. For general non-point source the criteria are the use classification of the receiving waters, water quality of the receiving waters, the project benefits and a tie breaker. Again, each criteria category has a series of weighted subcategories.

Chapter 92 provides for the administration of the state revolving fund program for wastewater treatment and water pollution control projects. This program has four set asides:

⌘ Onsite wastewater treatment and disposal systems fund; the minimum loan amount is \$50,000 for point source projects. The maximum amount loaned cannot exceed 60 percent of the available funds for point source projects.

⌘ Livestock water quality facilities set-aside; the minimum for livestock water quality facilities is \$10,000 and the maximum cannot exceed 50 percent of the livestock water quality facilities set-aside.

⌘ Local water protection projects set-aside; the minimum loan allowed for local water protection projects shall be \$5,000. The maximum loan for local water protection projects is \$50,000. The loan period shall not exceed ten years.

⌘ General nonpoint source project assistance set-aside; the minimum loan amount is 10,000 for a period not to exceed ten years.

The state will develop an intended use plan outlining the goals and the loan priorities under this program. The plan contains the state priority list—detailing each project and set-asides eligible for a loan. It also contains the fundable list which identifies projects scheduled for loans during the fiscal year.

The rules in Chapter 93 provide for the administration of the onsite wastewater treatment system assistance program; it has been in place since 2001 and this filing contains few revisions. The onsite wastewater assistance fund (OSWAF) is a separate fund within the state treasury. It is a

revolving loan fund used to provide low-interest loans to homeowners for improving and rehabilitating onsite wastewater treatment systems.

The program will provide low-interest loans to rural applicants; individual homeowners may obtain low-interest loans from a participating financial institution to rehabilitate or improve their septic tank system. The rules create a linked deposit program similar to the agricultural programs administered by the state Treasurer. Essentially the division will stand as surety for the loan, thus reducing loan costs to the borrower. A participating lender will make the loan secured by a certificate of deposit from the state fund.

ENVIRONMENTAL PROTECTION COMMISSION

9:40.

Landfill closure: financial assurance, IAB Vol. XXVI, No. 08 ARC 2863B, NOTICE.

This subject was generally discussed by the ARRC in April. The EPC offers a revision of its' existing rules relating to financial responsibility for cleaning up landfills. These revisions are not major changes, but the underlying program is important and merits discussion. The EPC has stated that the intent of the statute is to require those who generate the waste to pay for the post closure costs. Iowa Code §455B.306(8)"b" states in part:

"The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility."

Every landfill must maintain an updated estimate of the cost to properly close the landfill; the steps required to close a landfill are detailed in the rule. Chapter 111 specifies a series of financial mechanisms that can be used to meet the closure requirements.

Landfills must also maintain financial assurance for *postclosure* work. The format is similar to that used for the closure regulations.

HUMAN SERVICES DEPARTMENT

THE RULES DIGEST

-4-

2:40

Community living, IAB Vol. IAB Vol. XXVI, No. 08 ARC 2845B, ADOPTED.

Legislation enacted in 2002 eliminated a provision from Iowa Code Chapter 135C which created an exemption from licensure for five bed community living programs. It was thought at that time an exemption could be administratively provided; however the Department of Inspections and Appeals stated that removing this statutory exemption had the opposite effect---it required these facilities obtain a license under Chapter 135C. Such a requirement imposed significant hardship on five bed facilities which would need to obtain a license as a residential care facility.

That issue has been resolved in House File 387 which re-instates the waiver for the existing 5- bed facilities. For new request for a waiver, the applicant must show:

- ⌘ That approval will not result in an over-concentration of such living units in an area;
- ⌘ That there is county support;
- ⌘ That the quantity of currently available services is insufficient to meet the need.
- ⌘ That the quantity of affordable rental housing is insufficient;
- ⌘ That approval will result in a reduction in the size or quantity of larger congregate settings.

HUMAN SERVICES DEPARTMENT

2:40

Medicaid payments to hospitals: crossover claims, IAB Vol. XXVI, No. 08 ARC 2576B, ADOPTED.

These provisions were initially reviewed by the ARRC in draft form at the June meeting and then formally as an “emergency” rule in August. Under Medicaid policy claims for hospital services provided to patients who are eligible for both Medicare and Medicaid automatically “crossover”, allowing Medicaid to pick up that portion of the hospital care not covered by Medicare. This rulemaking eliminates the Medicaid payment (Federal/state match) if actual Medicare reimbursement exceeds Medicaid reimbursement for the service. Under this concept unpaid co-payments and deductibles would be considered bad debt and would be reimbursed at the 70% level by

Medicare (100% federal dollars). DHS would then make up the remaining 30%, using Medicaid funds, thus providing the same funding, but at less cost to the state. The elimination of crossover claims is approved in House File 667, contingent on federal approval of this plan.

HUMAN SERVICES DEPARTMENT

2:40

Drug costs, IAB Vol. XXVI, No. 08, ARC 2841B, ADOPTED.

Medicaid reimbursement rates for prescription drugs are determined through a complicated process; one of the factors considered in this calculation is the state maximum allowable cost (SMAC). At one time the allowable cost was determined the department, based on the average wholesale acquisition cost for a drug and all equivalent products adjusted by a “multiplier” of at least 1.0, plus a professional dispensing fee. Last December the multiplier was discarded in favor of an adjustment factor of 2.1 determined by the department in consultation with a private group.

House File 619 was enacted to lower the overall costs of Medicaid prescription drugs; in part it resets the adjustment factor, as a matter of law, down to 1.4 and requires participating pharmacists to gather information necessary to monitor and revise drug reimbursement rates. The Act also lowers the dispensing fee from \$5.17 to \$4.26 and lowers the estimated acquisition cost from the average published wholesale price less 10 percent to the average wholesale price less 12 percent.

In a related filing, ARC 2842B implements House File 619 by reducing drug costs and raising the required co payment for prescription drugs from a flat \$1 to amounts varying from \$0.50 to \$3, depending on the cost of the drug and whether the drug is brand name or generic. The Act also imposes a co payment of \$3 for each physician office visit.

HUMAN SERVICES DEPARTMENT

2:40

THE RULES DIGEST

-5-

Child care, IAB Vol. XXVI, No. 08 ARC 2582B, ADOPTED.

Senate File 351 has significantly modified requirements for employment in child care facilities. Under the Act the department must evaluate any person who has committed a “transgression” to determine whether it is appropriate for that person to work in proximity to children. A transgression includes:

- ⌘ Conviction of a crime;
- ⌘ A record of having committed founded child or dependent adult abuse;
- ⌘ Listing in the sex offender registry under chapter 692A;
- ⌘ A record of having committed a public or civil offense;
- ⌘ The department has revoked a child care facility registration or license due to the person's continued or repeated failure to operate the child care facility in compliance with this chapter and rules adopted pursuant to this chapter.

A person who has committed a transgression is prohibited from involvement with child care if that person has committed sexual abuse; child endangerment, neglect or abandonment; domestic abuse; a crime against a child or forcible felony. A person who has been convicted of a controlled substance offense or has committed physical abuse is prohibited from involvement with child care for five years. At that time the person may be re-evaluated to determine whether prohibition should continue.

HUMAN SERVICES DEPARTMENT

2:40

Confidentiality of medical records, IAB Vol. XXVI, No. 09 ARC 2902B, EMERGENCY.

The federal Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191 and federal regulations set out in 45 CFR Part 164 establish standards to protect the privacy of certain types of health information. Under the Act custodians of protected personal health information, which relate to a specific consumer or customer, cannot disclose that information unless an authorization is obtained from that consumer or customer. Personal health information contains information about that person’s past, present, or

future medical condition, treatment, or payment for that treatment. Authorization is not required for certain types of disclosures relating to certain specific governmental functions such as law enforcement or public health activities.

These federal standards require the revision of the confidentiality provisions for the Medicaid, Hawk-I and similar programs. The department is required to establish a special privacy office responsible for compliance with HIPAA regulations, responding to complaints and questions about privacy of protected health information, and handling any related requests. DHS clients generally have a right to review their own health information, obtain copies (for a fee) and request correction of any error. The client is also entitled to an “accounting” which would identify *most* of the disclosures made without authorization from the client. The accounting does not include criminal or national security disclosures.

Specific procedures are required for handling protected personal health information. The department must identify those persons or groups who need access to the information and the types of information that is needed. The department must also make reasonable efforts to limit the access of those persons to the information actually required. The department must also have specific policies for routine and individual situations that limit the amount of the protected health information disclosed to that reasonably necessary to achieve the purpose of the disclosure.

HUMAN SERVICES DEPARTMENT

2:40

Fraudulent payments to day care providers, IAB Vol. XXVI, No. 09 ARC 2903B, NOTICE.

Iowa Code §237A.29 requires the department to impose sanctions on child care providers that commit fraud in order to receive state funding. Sanctions under the statute include:

- ⌘ ineligibility to receive public funding;
- ⌘ temporary suspension;
- ⌘ “special” review of the provider's claims;

THE RULES DIGEST

-6-

Sanctions may be imposed when a care provider has been found, either through administrative or judicial action, *“to have obtained by fraudulent means child care assistance payment in an amount in excess of \$1,000...”*

INSPECTIONS AND APPEALS

2:20

Registered amusement devices, Vol. XXVI, No. 09 ARC 2912B, NOTICE.

House File 594 provides for the annual \$25 registration of every “electrical and mechanical amusement device” which dispenses a prize. These devices are similar to video slot machines; upon winning, the player receives a paper slip awarding a prize. The Act provides that prizes are redeemable only at that premises and only for merchandise regularly sold at the premises. Qualified non-profit organizations can have up to four machines (eg: vet clubs) while other establishments (eg: bars) can have two. In short, these are video slot machines, located in service clubs and bars, awarding food and drink prizes instead of cash.

In addition, the Act requires that registered machines must be purchased from a manufacturer, manufacturer's rep. or distributor which also has been registered with the department. These annual registrations are \$2,500. Under the rules proposed by the department the term “distributor”, and hence the \$2,500 annual fee does not apply to a person who owns a device but does not intend to sell or lease it to another.

IOWA VETERANS HOME

No Rep

Treatment of assets and income, IAB Vol. XXVI, No. 08 ARC 2872B, EMERGENCY.

In March the Veterans Home raised the amount of income and level of assets a veteran could retain for personal needs and use. Amounts above that level are used by the home to help defray the costs of care. The March revision put the actual income and asset policy above the level set in 801 IAC Chapter 10, Veterans Affairs Commission rules.

At the committees' September meeting the homes' commandant acknowledged and apologized for the rule-making error. He noted that the increase was the first in ten years and was still below the level set in Nebraska. The increase will cost the Home some \$300,000, which will be absorbed in the existing budget; no appropriation will be requested. These revisions are filed on an emergency basis to correct the discrepancy.

DEPARTMENT OF MANAGEMENT

10:30

Local government innovation fund, IAB Vol. XXVI, No. 08 ARC 2872B, NOTICE.

Senate File 453, §27 creates a local government innovation fund, administered through the department; the fund consists of \$10,000,000. Under the Act the department will create a seven member committee to administer the program. The committee will review all applications and approve loans if the committee determines that a local project would result in cost savings, innovative approaches to service delivery, or added revenue to the city, county, or state. To be eligible projects must show they cannot be funded the local operating budget without “adversely affecting” normal service levels.

Loans are to be repaid over five years, with interest. The continued operation of the funds comes through the repayment of the loans. However, up to 20 percent of the appropriation can be forgivable loans or grants for an “innovative sharing initiative”.

NATURAL RESOURCES COMMISSION

10:00

Reap promotion, IAB Vol. XXVI, No. 09 ARC 2911B, NOTICE.

The resource enhancement and protection program (REAP) is a funding program intended to use and protect Iowa's natural resources through the acquisition and management of public lands, the upgrading of public park and preserve facilities; environmental education, monitoring, and research.

THE RULES DIGEST

-7-

The program funds city, county and private projects. This is the first revision in five years.

This proposal would add a public relations component to each project, requiring “public communications activities” to inform the public of the REAP program and of the particular project. Signs must be placed on site identifying the REAP project and a dedication ceremony must be held. To ensure an enthusiastic level of compliance ten percent of the award will be withheld until compliance is documented. As part of the initial proposal, a public communications plan is required; the quality of the plan will be evaluated as part of the grant process.

PERSONNEL DEPARTMENT

10:40

IPERS death benefit, IAB Vol. XXVI, No. 08 ARC 2875B, NOTICE.

Under the provisions of the federal Internal Revenue Code, a retirement plan such as IPERS may provide a death benefit when the member dies prior to retirement; however, that benefit must be only incidental to the system's primary goal of providing retirement benefits to the member. In a variety of situations it appears that the IPERS death benefit exceeds what the IRS considers incidental to a retirement plan. For that reason the IPERS board proposes to limit the benefit to 100 times the monthly benefit payable under plan two. Under plan two a monthly benefit is paid during the life of the member followed by a death benefit which declines in value the longer the member lives.